

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2014100339

ORDER FOLLOWING PREHEARING
CONFERENCE

On October 27, 2014, a telephonic prehearing conference was held before Administrative Law Judge Deidre L. Johnson, Office of Administrative Hearings. Attorney F. Richard Ruderman appeared on behalf of Student and Parents (Student). Attorney Claudia Weaver appeared on behalf of the Sacramento City Unified School District. The PHC was recorded.

Based on discussion with the parties, the following order is issued:

1. Hearing Dates, Times, and Location: The expedited hearing dates are confirmed. The expedited hearing shall take place on November 4, 5, and 6, 2014, for a total of three days of hearing. The hearing shall begin at 9:30 a.m. on November 4, and at 9:00 a.m. on all other days. The hearing shall be held at Sacramento's offices at 5735 47th Avenue, Sacramento, California 95824.¹

Sacramento shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

2. Notice to Witnesses: The parties shall immediately notify their witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available to the

¹ At a minimum, the hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. Sacramento shall ensure that all parties and the ALJ have drinking water and tissue available to them during the hearing.

other party without need for a subpoena. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness has not been properly notified of the hearing date or properly subpoenaed, as applicable.

3. Motions:

(a) Motion to Amend: On October 23, 2014, Sacramento filed a motion to amend its request for an expedited due process hearing. Student opposed the motion. An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(i)(II).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. § 1415(f)(1)(B).)

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement, or a manifestation determination; or a school district that believes that maintaining the child in his or her current placement is substantially likely to result in injury to the child or others, each have the right to appeal the district's decision and request and receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) (2006).) The procedural right to an expedited due process hearing is mandatory and does not authorize OAH to make exceptions or grant continuances of expedited matters. (*Ibid.*) In sum, a matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, or if the party withdraws the issues in the complaint that triggered the expedited hearing.

Since the filing of an amended complaint restarts the applicable timelines for hearing, granting the right to amend would result in a continuance which is not authorized under the laws applicable to expedited hearings. Based upon the above authorities, Sacramento's motion to amend its expedited complaint is denied.

(b) Motion to Dismiss: On October 23, 2014, Student filed a motion to dismiss Sacramento's expedited complaint on the ground that Sacramento did not claim in the complaint that he had been disciplined or violated any code of student conduct while enrolled in Sacramento. On the same date, Sacramento filed an opposition to the motion. On October 24, 2014, Student filed a reply. During the PHC, both parties orally argued the motion. **At the request of Sacramento, the parties may file any written supplemental arguments by 5:00 PM on Tuesday, October 28, 2014.** The ALJ will thereafter rule on the motion.

4. Issues: The issues for hearing are limited to those alleged in Sacramento's expedited complaint. The issues were discussed during the PHC, and are reframed and clarified below.²

Issue 1: Is maintaining Student's current educational placement at John F Kennedy High School substantially likely to result in injury to Student or others such that Sacramento may place Student in an interim alternative educational setting for up to 45 school days without parental consent?

Issue 2: If so, is Sacramento's proposed placement of Student at the Hickey Community Day School, or if it is unavailable, another state-certified nonpublic school, an appropriate interim alternative educational setting?

Proposed Resolutions and Defenses: Sacramento's proposed resolutions and Student's defenses were briefly discussed during the PHC. Student retains the right to present all relevant defenses during the hearing.

5. Exhibits: Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties' exhibits shall be pre-marked using numbered tabs and accompanied by a detailed exhibit list. Student's **exhibit list** shall identify each exhibit by number and the designation "S" (e.g., S1), and the District's **exhibit list** shall identify each exhibit by number along with a "D" (e.g., D1).³ Any document over five pages in length shall be internally paginated. Each exhibit binder shall contain a detailed table of contents or list. Unless agreed upon otherwise, each party shall serve an exhibit binder containing its respective exhibits and list on the other party not less than five business days prior to the start of the hearing.⁴

At the hearing, the parties shall supply an additional exhibit binder containing their respective exhibits and lists for use by the ALJ, and another exhibit binder for use by the witnesses. In the event of duplicate exhibits, the most legible version will be used, unless otherwise ordered. The parties shall not serve exhibits on OAH prior to the hearing.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged may not be admitted

² The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

³ The parties are not required to add their identifying letter to their exhibit tabs.

⁴ Education Code section 56505, subdivision (e)(7).

into evidence at the hearing unless it is supported by a declaration under penalty of perjury, and the ALJ rules that it is admissible.

6. Witnesses: **By noon on Friday, October 31, 2014, the parties shall meet and confer to formulate their witness lists and schedules. At the commencement of the hearing, the parties will present their witness schedules.** The ALJ and the parties will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual witnesses. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for any witness's testimony. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Each party shall manage the number of witnesses so that the party's evidence will be presented within its approximate allocation of 50 percent of the total hearing time.

During the PHC, Student, added himself and [redacted] to his witness lists. The parties shall proceed efficiently in their questioning of witnesses and shall narrow their witness lists and their questions to witnesses to avoid unnecessary or duplicative testimony. The parties should bear in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. Both parties reserve the right to call witnesses disclosed on their lists, other than those listed below.

7. Telephonic Testimony: Whether a witness may appear by telephone is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5 § 3082, subd. (g).) The parties did not request the telephonic testimony of any witness during the PHC. During the PHC, Sacramento moved to take the testimony of two witnesses, [redacted], by telephone. Given Sacramento's lack of specific information to support the request, the motion was denied without prejudice to Sacramento's right to renew the motion.

8. Order of Presentation of Evidence and Scope of Examination: Sacramento shall produce its evidence first. Where Student and Sacramento intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. After the first direct and cross-examinations of a witness, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination unless otherwise ordered.

9. Closed Hearing: The hearing shall be closed to the public unless Student requests otherwise.

10. Motions: Any other motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to, or during this PHC.

11. Special Needs and Accommodations: No special accommodations were requested during the PHC. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk

at (916) 263-0880, the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at: <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

12. Conduct of Counsel and Hearing Room Decorum: Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other electronic devices shall be turned off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

13. Settlement: The parties are encouraged to negotiate to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact during business hours by telephone at **(916) 263-0880**.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT **(916) 274-6035**, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. OAH will check for messages the evening prior to the hearing and the morning of the hearing. If a settlement is subject to board approval, the parties may file a request to vacate the hearing dates and set a telephonic status conference not less than two weeks following the date anticipated for board approval.

14. Failure to comply: Failure to comply with this order may result in the exclusion of evidence or other sanctions.

DATE: October 28, 2014

/s/
DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings